

## CITY OF RYE POLICE DEPARTMENT

General Order # 103.3		New [ ]
Revised [X]		Supersedes: 103.3 issued
3/14/2018		
Subject: Use of Force / Deadly Physical Force		
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Issuing Authority: Michael C. Anfuso, Acting Commissioner of Public Safety		

### PURPOSE

To establish the Standard Operating Procedures and reporting requirements for the use of **Physical Force**, including **Deadly Physical Force**, by Sworn Members in performance of their official duties. This policy, combined with comprehensive training, will serve as a guide to officers for the real-world application of the concepts that follow.

### POLICY

It is the policy of this department to value and preserve human life and human dignity without prejudice to anyone.

Sworn Members will use only the level of **Physical Force** that is **objectively reasonable**, in light of the facts and circumstances perceived by the officer, to effect an arrest, prevent an escape, or in defense of themselves or others. This will be done in accordance with Article 35 of the New York State Penal Law, the Department's General Orders and the current training standards of this Department.

Factors that may be used to determine the reasonableness of force include, but are not limited to:

1. The severity of the crime(s) or circumstance(s).
2. The level and immediacy of the threat or resistance posed by the suspect.
3. The potential for injury to citizens, officers, and suspects.
4. The risk or attempt of the suspect to escape.
5. The knowledge, training, and experience of the officer.

6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects.
7. Other environmental conditions or exigent circumstances.

#### DEFINITIONS

- A. **De-escalation Techniques** - taking action(s) or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation without the use of force. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, tactical positioning and THE display of department equipment.
- B. **Restraining Force** - use of force which is limited to holding and restraining a person.
- C. **Physical Force** - use of any part of the officer's body, O.C. sprays, CEWs and use of any object (riot baton, straight baton, flashlight, body shield) as a less lethal weapon to compel compliance.
- D. **Less Lethal Force** - any use of force which an officer applies that is not likely to cause death or **Serious Physical Injury**.
- E. **Deadly Physical Force** - any use of force which, under the circumstances in which it is used, is readily capable of causing death or other **Serious Physical Injury**.
- F. **Physical Injury** - impairment of physical condition or substantial pain.
- G. **Serious Physical Injury** - **Physical Injury** which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
- H. **Objectively Reasonable** - the determination that the necessity for using force and the level of force used is based upon the officer's evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.

#### PROCEDURE

##### A. **GENERAL PROVISIONS**

1. Use of **Physical Force** should be discontinued when resistance ceases or when the incident is under control.
2. **Physical Force** will not be used against individuals in restraints, except as **Objectively Reasonable** to prevent imminent bodily injury to the individual, the

officer, or another person. In these situations, only the minimal amount of force necessary to control the situation will be used.

3. Once the scene is safe and as soon as practical, an officer will provide appropriate medical care consistent with his/her training to any individual who has visible injuries, complains of being injured, or requests medical attention.
4. All uses of force by Sworn Members will be documented through a Use of Force Report and an Incident report.
5. **Restraining Force** and **De-escalation Techniques** will **not** constitute a Use of Force.
6. Nothing contained herein will be deemed to limit the routine restraint of prisoners, including, without limitation, the use of handcuffs and shackles.
7. While on-duty, any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable under the circumstances will intercede to halt, to the best of their abilities, the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.

#### B. DE-ESCALATION TECHNIQUES

1. Sworn Members will use **De-escalation Techniques** and other alternatives to higher levels of force consistent with his/her training whenever possible and appropriate before resorting to force and to reduce the need for force.
2. Whenever possible and when such delay will not compromise the safety of the officer or another person and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, Sworn Members will allow individuals time and opportunity to submit to verbal commands before force is used.
3. **Restraining Force** and other compliant handcuffing will be performed as outlined in G.O. 110.1.

#### C. RESTRAINT TECHNIQUES

1. When **De-escalation Techniques** are not effective or appropriate, Sworn Members may consider the use of **Physical Force** to control a non-compliant or actively resistant individual.
2. Sworn Members are authorized to use **Physical Force**:
  - a. To protect the officer or others from immediate physical harm.
  - b. To restrain or subdue an individual who is actively resisting or evading arrest.
  - c. To bring an unlawful situation safely and effectively under control.
  - d. When the officer reasonably believes use of **Restraining Force** alone would result in injury to

- himself, the suspect or a third party, or would result in further escalation of force.
3. All sworn members will be trained annually on department issued weapons placed at this level of force, namely O.C. Spray, CEWs and Police Batons.
  4. Physical force will not be used by an officer for any of the following reasons:
    - a. To extract an item from the anus or vagina of a subject without a warrant (see G.O. 110.3).
    - b. To coerce a confession from a subject in custody.
    - c. To obtain blood, saliva, urine, or other bodily fluid or cells, from an individual for the purpose of scientific testing in lieu of a court order where required.
    - d. Against persons who are handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.

#### **D. DEADLY PHYSICAL FORCE**

##### **1. Confrontation Situations**

Sworn Members are authorized to use **Deadly Physical Force** to defend the officer or another person from what the officer reasonably perceives as an immediate threat of death or **Serious Physical Injury**.

##### **2. Apprehension and Pursuit Situations**

- a. When a Sworn Member acting on personally known information has reasonable cause to believe that an armed or dangerous subject has committed a felony which involved the use or attempted use, or threatened immediate use of **Deadly Physical Force** against a person; and
- b. There is a substantial risk that the fleeing subject will cause death or **Serious Physical Injury** if not immediately apprehended; and
- c. There is no other reasonable means to effect the arrest; and
- d. The discharge does not appear likely to injure innocent bystanders.
- e. Where feasible, the officer will identify himself/herself as a law enforcement officer and warn of his/her intent to use deadly force.

The foundation of this policy is found in Section 35.30 of the Penal Law as modified by the holding of the United States Supreme Court in *Tennessee v. Garner*. That court held that the firing at a fleeing felon is unconstitutional unless the discharging officer has probable cause to believe that the suspected person poses a significant

threat of death or **Serious Physical Injury** to the officer or others. Officers should be thoroughly familiar with the above section and the holding in **Tennessee v. Garner.**

**3. Injured Animal**

Sworn Members are authorized to use **Deadly Physical Force** to kill a dangerous animal only when no other means to bring the animal under control exists, or for the destruction of a critically injured animal.

Headquarters will be notified whenever possible prior to the discharge of a firearm. Following the discharge an Animal Destruction report will be completed in accordance with G.O. 120.5.

**4. Moving Vehicles**

Discharging a firearm at or from a moving vehicle is prohibited unless the occupants of same are using **Deadly Physical Force** against the officer, or another person and the officer reasonably believes that he will not endanger innocent persons.

**5. Warning Shots**

Sworn Members are not authorized to use their firearm to fire warning shots.

**6. Firing Shots for Alarm**

Firearms will not be discharged to summon assistance except where the officer's safety or that of another is seriously endangered and they believe there is no reasonable alternative. Extreme care must be exercised in such situations to prevent injury to the officer or other persons.

**7. Firearms Practice and Testing**

- a. Sworn Members may discharge firearms in a controlled setting for training purposes at legitimate firing ranges or for other lawful recreational purposes conducted in accordance with applicable law, rules and regulations.
- b. Sworn Members will receive training, at least annually, on this department's use of force policy and NYS Penal Law Article 35.

**8. Post Incident Management**

- a. Any injuries resulting from a use of force incident shall result in appropriate and timely medical attention being provided to the injured party.
- b. In every instance in which a Sworn Member, whose action(s) or use of force in an official capacity, uses **Deadly Physical Force** and where such use of force results in death or bodily injury to another person the following steps will be taken:
  - i. If the incident involves a Sworn Member's weapon, it will be replaced with another weapon and all weapons carried by the officer at the time of the incident will be safeguarded and turned over to the Tour Supervisor.
  - ii. The involved officer will be given the opportunity to call his/her family as soon as possible to avoid the possibility of learning about the incident through other than official sources, e.g. press, radio, TV, etc.
  - iii. The officer will not be allowed to talk to the press. All information regarding the incident will be given out through the office of the Commissioner of Public Safety. (see G.O. 119.2)
  - iv. Prior to the officer making a written statement, he/she will be provided the opportunity to consult with a P.B.A representative.
  - v. The officer will be relieved of regular duty and transported to the hospital as soon as practical.
  - vi. Supervisory Notification and Response General Order (114.2) will be followed.

## REPORTING

### **A. GENERAL PROVISIONS**

- 1. All Use of Force reports, Incident reports, and Supplemental reports will be completed in a timely and accurate manner by the involved Sworn Member.
- 2. All Use of Force reports will include:
  - a. The location of the incident, date, time, source and defendant's pedigree information.
  - b. The condition of the defendant.
  - c. Any **Physical Force** used.

- d. Any firearms information.
  - e. Any medical care provided.
  - f. Any uninvolved witnesses to the incident.
  - g. Any comments that do not appear in an Incident report or a Supplemental report.
  - h. Police photos and video information.
  - i. Any other Officers on scene.
  - j. Reporting Officer, Tour Supervisor and Patrol Commander review.
3. Unless ordered by the Patrol Commander, at minimum, Incident reports will contain the reasons for the use of force, any injuries prior to and after the use of force for all involved parties and any medical care given.

#### **B. DE-ESCALATION TECHNIQUES**

1. A Sworn Member that uses **De-escalation Techniques** will, depending on the nature of the call, enter comments on the Incident report.

#### **C. RESTRAINT TECHNIQUES**

- 1. Any Sworn Member that uses **Physical Force** will give verbal notification to the Tour Supervisor as soon as practical.
- 2. If there is any obvious medical need, EMS will respond to provide medical care and/or transport the subject to the hospital.
- 3. Handling and transport of prisoners will be conducted as outlined in General Order 110.1.
- 4. Any special considerations regarding prisoner handling and transport for CEW use or O.C. Spray can be found in G.O. 103.10 or 103.7.
- 5. Each Officer that uses **Physical Force** will submit a Use of Force report.
- 6. The assigned officer will submit an Incident report along with the Use of Force report.
- 7. Additional officers will submit a Supplemental Report.
- 8. All uses of force will be investigated as outlined in G.O. 120.4.

#### **D. DEADLY PHYSICAL FORCE**

- 1. Any Sworn Member that uses **Deadly Physical Force** will give verbal notification to the Tour Supervisor as soon as practical.
- 2. The Tour Supervisor will respond to the scene immediately and follow the steps as outlined in the Post Incident Management section of this G.O.
- 3. EMS will respond immediately for transport to the hospital.
- 4. Handling and transport of prisoners will be conducted as outlined in General Order 110.1.

5. Each Officer that uses **Deadly Physical Force** will submit a Use of Force report.
6. The assigned officer will submit an Incident report along with the Use of Force report.
7. Additional officers will submit a Supplemental Report.
8. All uses of force will be investigated as outlined in G.O. 120.4.
9. Firearm Discharge Report will be completed as outlined in G.O. 120.5.

#### TRAINING

All officers will receive training and demonstrate their understanding on the proper application of force. Training will include, but is not limited to, use of force, conflict prevention, conflict resolution and negotiation, de-escalation techniques and strategies, duty to intervene, and prohibited conduct.